

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MICHAEL WAYNE CRAIG

§

VS.

§

CIVIL ACTION NO. 5:07cv167

DIRECTOR, TDCJ-CID

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Michael Wayne Craig, an inmate confined at the Michael Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections are without merit and should be overruled.

The magistrate judge's recommendation of dismissal was based on the petition being barred by the applicable one year statute of limitations. Petitioner's judgment was affirmed by the appellate court on June 6, 2003. On May 5, 2004, *pro bono* counsel informed petitioner that counsel would

no longer represent him because counsel could not assert in a habeas petition a claim of his own ineffectiveness. However, petitioner waited an additional fourteen months before filing a petition seeking an out-of-time petition for discretionary review. Additionally, petitioner waited more than four months before filing his state application for writ of habeas corpus and yet another seven weeks after his writ was refused before filing this petition. As the magistrate judge observed, the petition is absent exceptional circumstances such that would potentially warrant the application of equitable tolling.

O R D E R

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 30th day of June, 2008.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE